

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.6222 OF 2006

Vithal Krishna Chendvankar..Petitioner

Vs.

Additional Commissioner
of Police & Anr.

..Respondents

Mr. Anil P. Joshi, for the Petitioner

Mr. P.P. Kakade, AGP for Respondents.

CORAM : F.I. REBELLO &

R.V. MORE, JJ.

DATED : 16TH JANUARY, 2007

P.C.

. Rule. Heard forthwith.

2. The petitioner joined as a constable in the service of respondent No.2 on 15th February, 1975. The petitioner subsequently came to be promoted as Head Constable. The petitioner on 31st May, 2005 was found not wearing his full uniform but wearing Khaki Pant and a civilian shirt in the veranda of Mahim Police Station. On enquiry made it was revealed that the petitioner was on delta mobile duty and he was found in the veranda leaving his duty and also found to be on inebriated state. The petitioner came to be dismissed by order dated 3rd January, 2006 by dispensing with the enquiry under Article 311 of the Constitution of India in purported exercise of powers under clause (b) of second

proviso to Article 311 of the Constitution of India. The petitioner made representation on 8th January, 2006 requesting not to exercise the powers under the second proviso. The reason for dispensing with enquiry was that the petitioner was not wearing full uniform and such act on the part of the petitioner being against the discipline of the Police Force, the Disciplinary Authority arrived at a satisfaction that it would not be reasonably practicable to hold Departmental Enquiry against the petitioner and accordingly passed the order of dismissal dated 3rd January, 2006. Being aggrieved the petitioner preferred Original Application No.30 of 2006. The learned Tribunal by its impugned judgment and order dated 3rd May, 2006 was pleased to dismiss the Appeal. The contention urged on behalf of the petitioner is that the enquiry under Article 311 ought not to have been dispensed with was rejected. The learned Tribunal also chose not to interfere with the punishment imposed. Dealing with the contention that the penalty was extreme and the punishment of dismissal was not warranted, the Tribunal from the record noted that the past service record of the petitioner will indicate that the petitioner had received minor punishments by way of warning from the authorities and for a similar incident he was suspended on 29th September, 2003 and the penalty of stoppage of one year increment was imposed upon him and he was reinstated on 15-1-2004. The Tribunal, therefore, felt that it would not be appropriate to interfere with the punishment imposed.

3. We do not propose to go into the issue as to whether

in a case like the present an enquiry under Article 311 ought to have been dispensed with. We leave that question for consideration in a proper case considering the view to be taken in this case. We have heard the learned A.G.P. on the point of quantum of punishment and he was asked to seek directions from the Disciplinary Authority. No doubt in a disciplined force like the Police Force an employee is bound to maintain discipline. To that extent we are not inclined to interfere with the order of removal of the petitioner from the service. The only question is whether the Disciplinary Authority on the facts and circumstances and the past service record of the petitioner ought to have imposed the punishment of dismissal on the petitioner. As we have noted earlier the petitioner joined the service in the year 1975. He was dismissed on 17th January, 2006. In other words at the time of dismissal the petitioner had put in nearly over 30 years of service. The petitioner in fact was due to retire sometime on 31st March, 2010. A perusal of what the Tribunal has noted in the service record of the petitioner would indicate that on one occasion an increment was stopped for one year and there are some other minor punishment on his record. It is in this context that we have to examine the matter whether the punishment is harsh and disproportionate to the misconduct alleged and proved. It is no doubt true that the Tribunal or this Court ordinarily ought not to interfere with the discretion exercised by the Disciplinary Authority. It is, however, still open to this Court in the exercise of its extraordinary jurisdiction to satisfy itself that the punishment

imposed is not harsh and disproportionate to the misconduct alleged and proved. Whilst imposing punishment the Disciplinary Authority has to take into consideration the nature of the misconduct alleged and proved, the past service record and any extenuating or attenuating circumstances. In the instant case the misconduct alleged against the petitioner was that he was not found properly dressed whilst on duty and in an inebriated state. The reason given by the petitioner for his inebriation was that it was on account of personal difficulties. The past record would indicate that apart from stoppage of increment for one year the petitioner was not punished for any other major misconduct in the past. The other punishments imposed were minor. In support of his extenuating circumstances the petitioner had pointed out that his long service and further that there was a family dependent upon him and the difficulties that he and his family would be suffering the consequences of an order of dismissal.

4. Considering these aspects of the matter we are clearly of the opinion that the Disciplinary Authority did not take into consideration these vital aspects whilst imposing the punishment of dismissal from service which renders the petitioner ineligible to receive any terminal benefits though he had put in over 30 years of service and that too without any previous major punishment. We are, therefore, inclined considering the nature of the charge to hold that the punishment of dismissal from service was disproportionate to the misconduct alleged and proved and

considering the past service record of the petitioner. In our opinion the ends of justice will be met if the punishment of compulsory retirement was imposed on the petitioner which will not disentitle him for pension and other terminal benefits. In the light of that the following order;-

(1) The impugned orders of the Tribunal and the Disciplinary Authority are set aside. The order of dismissal is reduced to one of compulsory retirement from the service.

(2) Considering the above the respondents are directed to pay to the petitioner all the terminal benefits which he would be entitled to consequent on the punishment being reduced to one of compulsory retirement.

(3) Rule made absolute accordingly. There would be no order as to costs.

(F.I. REBELLO, J)

(R.V. MORE, J)